

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
Civil Action No. 4:20-cv-00067

RANDY L. RHODES,

Plaintiff,

v.

WEEKS MARINE, INC.,

Defendant.

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant, Weeks Marine, Inc. (“Weeks Marine”), by and through undersigned counsel, pursuant to 28 U.S.C. §§ 1332, 1367, 1441, and 1446, and Rule 11 of the Federal Rules of Civil Procedure respectfully removes the above-entitled action from the Superior Court of Brunswick County, North Carolina. In support of such removal, Defendant states the following:

1. On or about January 31, 2020, Plaintiff filed its Complaint in the Superior Court of Brunswick County, North Carolina (File No. 20 CVS 197) (“Superior Court Action”).
2. Plaintiff alleges causes of action for Jones Act Negligence, Unseaworthiness, and Unpaid Maintenance and Cure and Unpaid Unearned Wages.
3. A copy of the Complaint was served upon Weeks Marine was served on March 27, 2020.
4. The United States District Court for the Eastern District of North Carolina

has original jurisdiction over the Superior Court Action pursuant to 28 U.S.C. §§ 1332(a), 1333, and it may be removed by Defendant pursuant to 28 U.S.C. § 1441(b) and 28 U.S.C. § 1446 for the following reasons:

- a. At the commencement of this action and at all relevant times, Defendant Weeks Marine is a New Jersey corporation with its principal place of business in New Jersey.
- b. Based upon information and belief, Plaintiff is a resident of Brunswick County, North Carolina.
- c. The matter in controversy between Plaintiff and Defendant is one in which complete diversity of citizenship exists.
- d. Defendant is filing this removal within the time period provided under 28 U.S.C. § 1446(b)(3).
- e. Upon information and belief, while reserving all defenses and rights of Defendant to maintain otherwise in the defense of Plaintiff's claims, the amount in controversy between the Plaintiff and Defendant in this action, exclusive of interest and costs, exceeds \$75,000.00 as evidenced by:
  - i. Complaint ¶ 37 (emphasis added): "[P]laintiff was hurt, resulting in ***severe injuries to his spine, for which he has received two surgeries and continues to undergo medical care.***"
  - ii. Complaint ¶¶ 41, 46: Plaintiff alleges he has sustained "physical injuries to his body, including his spine; he has undergone and he

is likely to continue to suffer in the future, physical pain, mental anguish and inconvenience; he has been, and is likely to continue to be disabled from performing activities that he used to be able to perform; he has been *unable to work at his calling and has been unable to earn income*; he has lost part or all of his capacity to earn income in the future; and he is likely to incur medical expenses in the future for the care and treatment of his injuries.”

- iii. Complaint ¶ 50: “Pursuant to applicable maritime law, the plaintiff is entitled to be compensated for unpaid expenses of lodging and medical care, and all unpaid, unearned wages which he would have earned through the end of the voyage.”
- iv. Complaint ¶¶ 42, 47: Each Paragraph, being separate claims for relief, separately allege compensatory damages in excess of \$25,000, being the maximum of pleaded damages allowed under North Carolina law pursuant to N.C. Gen. Stat. § 7A-243 (2019).
- v. **Exhibit A**, attached hereto, an affidavit from Teresa Olivo, Occupational Injury and Claims Manager for Weeks Marine, Inc., regarding the amounts of maintenance and cure which have been tendered thus far to Plaintiff and Plaintiff’s employment terms, inclusive of the Employee Acceptance of Forum Selection agreement.

vi. As otherwise may be shown if and as appropriate in this action.

f. Although Defendant does not allege it as an independent basis for removal, Plaintiff seeks relief pursuant to the Jones Act, 46 USC § 30104, and the general maritime law of the United States, and therefore this Court has concurrent jurisdiction under 28 U.S.C. § 1333.

g. Removal of this action would serve to enforce the Employee Acceptance of Forum Selection as required under Plaintiff's employment contract.

See **Exhibit A**.

5. The United States District Court for the Eastern District of North Carolina, Southern Division, embraces the District in which the Superior Court Action is now pending: Brunswick County. Therefore, the undersigned files this Notice of Removal from the Superior Court of Brunswick County, North Carolina, to the United States District Court for the Eastern District of North Carolina, Southern Division.
6. In accordance with 28 USC § 1446(a), Defendant attaches all process, pleadings, and Orders as Exhibits hereto.
7. Written notice of the filing of this Notice will be served upon the Plaintiff in this action, through counsel, as required by law.
8. A copy of this Notice of Removal is being sent for filing with the Clerk of the Superior Court of Brunswick County, North Carolina, contemporaneously with the filing of this Notice of Removal.

WHEREFORE, Defendant respectfully requests that this action be removed

from the Superior Court of Brunswick County, North Carolina, to the United States District Court for the Eastern District of North Carolina, Southern Division, and requests that this Court assume jurisdiction over this action, and proceed to final determination thereof.

This the 23<sup>rd</sup> day of April, 2020.

CRANFILL SUMNER & HARTZOG, LLP

BY: /s/ Jason R. Harris  
JASON R. HARRIS  
N.C. State Bar No. 27876  
MELANIE A. HUFFINES  
N.C. State Bar No. 55154  
101 N. 3<sup>rd</sup> St., Suite 400  
Post Office Box 1950  
Wilmington, NC 28402  
Phone: (910)777-6063  
Fax: (910)777-6142  
Email: [jharris@cshlaw.com](mailto:jharris@cshlaw.com)  
[mhuffines@cshlaw.com](mailto:mhuffines@cshlaw.com)  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2020, I electronically filed the foregoing ***Notice of Removal*** with the Clerk of Court using the CM/ECF system, and will deposit the foregoing document in the U.S. Mail addressed to the following:

John T. O'Neal  
7 Battleground Court, Suite 103  
Greensboro, NC 27408  
*Attorney for Plaintiff*

This the 23<sup>rd</sup> day of April, 2020.

CRANFILL SUMNER & HARTZOG, LLP

BY: /s/ Jason R. Harris  
JASON R. HARRIS  
N.C. State Bar No. 27876  
MELANIE A. HUFFINES  
N.C. State Bar No. 55154  
101 N. 3<sup>rd</sup> St., Suite 400  
Post Office Box 1950  
Wilmington, NC 28402  
Phone: (910)777-6063  
Fax: (910)777-6142  
Email: [jharris@cshlaw.com](mailto:jharris@cshlaw.com)  
[mhuffines@cshlaw.com](mailto:mhuffines@cshlaw.com)  
*Attorneys for Defendant*